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Refugee Reports

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FOLLOWING NICARAGUAN ELECTIONS, MIXED PROSPECTS FOR REFUGEES

For many Nicaraguan refugees, the first response to the Sandinista defeat in the February elections was to celebrate. Thousands of flag-waving, horn-honking Nicaraguan exiles poured onto the streets of Miami's "Little Managua" neighborhood. Two months later, as the Sandinistas hand over the reins of power to opposition leader Violeta Chamorro, many Nicaraguan refugees are adopting a "wait-and-see" approach before making any decisions about their future.

"We Don't Know for Sure What Will Really Happen"

One Nicaraguan woman who has been in the United States since 1988 told Refugee Reports, "I truly would not like to return because I worry that it will always be the same. Just recently, Ortega said he might not hand over power if the Contras don't disband. I'm not so sure that things will change that fast. But my husband's family has a ranch in Nicaragua, and here life is very hard."

As has been the case with an increasing number of other Nicaraguans during the past year, the woman and her family have been denied asylum. The rate of approval for Nicaraguan asylum applicants, not long ago the highest for any nationality, has dropped from 84 percent in 1987 to only 26 percent approval in 1989. The family has appealed, but expects eventually to be deported. With the new government in office in Nicaragua, the woman says that if she and her family are deported, "We will return with less fear. But still, we would not like to be deported."

Another Nicaraguan man interviewed said that most of his friends would like to return, but that they would prefer to wait until the situation stabilizes. "We don't know for sure what will really happen," he said, "and we can't afford to lose what we have here."

According to Dr. Jose Antonio Alvarado, coordinator of the Nicaraguan Task Force in Miami, "About 4,000 Nicaraguans have already returned, but most people will probably wait until around December to see if things really change before deciding whether to return." Even then, however, Alvarado believes that only about 25 percent of the estimated 100,000-200,000 Nicaraguans

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This month Refugee Reports focuses on repatriation, with several articles on the subject. First, Hiram Ruiz looks at the effect of a new government in Nicaragua on the Nicaraguan community in the United States, and on the legal implications of returning to Nicaragua for those involved in the U.S. asylum process.....1

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in Miami will choose to return home.

Those who have money to invest in the Nicaraguan economy are being courted by Chamorro's economic advisers. But a thorny problem yet to be fully resolved is that of compensation for returnees whose property was confiscated by the Sandinistas. Those properties include an estimated 10,000 homes. The Sandinista government recently enacted a new law that grants legal titles to those properties to their present occupants.

However, getting home may not be easy for Nicaraguans who may want to return but who have found it difficult to work or save money in the United States. According to Alvarado, "the Administration has proposed an allocation of $47 million to assist the Contras to repatriate, but no funds to assist Nicaraguans in the United States to return home." Alvarado adds that it is also unlikely that those people will be able to get any help from the Nicaraguan government once they are home. "You have to understand the situation in Nicaragua," he told Refugee Reports, "The country is broke." The only people likely to get their fares to Nicaragua paid, Alvarado said, are those deported by the Immigration and Naturalization Service (INS).

Deportation, Removal, and Voluntary Departure According to INS spokesman Duke Austin, few Nicaraguans have actually been deported. "Less than 200 have been deported in the last couple of years," Austin told Refugee Reports. But that could rapidly change. Since 1987, Nicaraguans have rarely been deported not only because of a higher asylum approval rate, but also because then-Attorney General Edwin Meese III issued a memorandum directing that Nicaraguans who had been denied asylum and who had exhausted their appeals not be deported without a Justice Department review of the case. (See Refugee Reports, Vol. VIII, Nos. 7 and 8.) Few Nicaraguans whose cases were sent for review were ever deported. With a U.S. supported, democratically elected government now in office in Nicaragua, many observers believe that could well change.

Many Nicaraguans also fear that 22,167 pending asylum applications as of the end of January 1990 will be denied, eventually leading to more deportations. In Miami, according to the April 25 Washington Post, "word already has spread of a coming 'firestorm' over anticipated asylum denials and a newly vigorous deportation policy."

Those who are deported are returned to their home country at U.S. government expense, but are then barred from applying for a visa to re-enter the United States for five years, unless they receive a waiver. Deportees who re-enter the United States without documentation are considered felons.

Nicaraguans who have either applied for asylum and not had a determination, who have been denied asylum but are appealing, or whose appeals have been denied but whose deportation orders are under review and who wish to return to Nicaragua at U.S government expense can apply for "removal" (under Section 250 of the Immigration and Nationality Act). As with deportees, however, those who request removal are barred from returning to the United States for five years, unless they receive a waiver.

People in the asylum process who wish to terminate their asylum request and return home at their own expense can apply for "voluntary departure." This is a "privilege" granted by immigration judges to people of "good moral character" who are able to show they have the means to return home. The government would not pay the fare, but as there would be no record of deportation, the individual who voluntarily departs would not be barred from applying for a visa to reenter the United States.

Nicaraguans who have been granted asylum and who have adjusted their status to permanent resident may come and go without restriction, finances permitting. They must of course have proper documentation in order to reenter the United States.

Many Uncertainties for Nicaraguans with Asylum But without Permanent Residence The situation for those who have been granted asylum but who have not yet adjusted to permanent resident, and who wish to return to Nicaragua briefly, is complex. INS guidelines for applying for adjustment of status state that an individual who has been granted asylum must have been "physically present in the United States for at least one year" before applying for adjustment. The guidelines do not, however, precisely define what effect an individual's temporary return to his/her country of origin--either before or after applying for adjust-

Nicaraguans in Little Managua, Miami. *UNHCR/L. Solmssen*

ment--would have on either the individual's application for adjustment or his/her refugee status.

Refugee Reports asked INS if even a brief return to Nicaragua affects the status in the United States of a Nicaraguan in this situation. "Of course it does," INS' Austin said. While a return to Nicaragua may not impact on the adjustment application itself, Austin explained, it could well impact on the adjustment applicant's refugee status. "Asylum is not a permanent status," Austin said. "The status of being an asylee is supposed to be reviewed annually." He added, "If refugees voluntarily return to their native homeland, I think it does bring into question their claim that they are in the United States for fear of persecution in their homeland."

Austin noted that the United States does not deport people who have been granted asylum but who have not adjusted to permanent resident. He cited the case of Poles associated with Solidarity who were granted asylum here. "Would they be involuntarily returned because solidarity is now running the country? The answer is no. The United States does not do that."

"But," he added, "if the person voluntarily returns to that country [the country of origin]... would that reflect on their case? I would say it would."

Nicaraguans with Refugee Status Eligible for Limited UNHCR Repatriation Assistance

If people with refugee status in the United States decide that they want to return home for good and want financial assistance to do so, help may be available from the UN High Commissioner for Refugees (UNHCR)--but again, with consequences. According to UNHCR's public information officer in Washington, D.C., Patricia Weiss Fagen, Nicaraguans who have been granted asylum in the United States and who therefore have refugee status but who wish to officially repatriate to Nicaragua could be eligible for UNHCR assistance. "There are people from other countries, for example Chileans, with refugee status in the U.S. who have decided to voluntarily repatriate and have been been assisted by UNHCR and the Inter-

national Organization for Migration (IOM)," Fagen said. "The implication for Nicaraguans is that they could be assisted as well." UNHCR assistance is based on need, and the government of Nicaragua has to approve each refugee's application for repatriation.

Fagen notes that UNHCR's package of assistance to returnees, which includes transportation to Nicaragua and a small reinstallation grant of $50 per adult and $25 per child, is mostly designed to assist rural refugees returning to Nicaragua from Central American countries. UNHCR, the Organization of American States (OAS), and the United Nations Development Program (UNDP) are planning a program of assistance to returnees in Nicaragua, but funds have not yet been solicited from international donors.

Refugees who officially repatriate will, however, lose their refugee status in the United States. According to Fernando Chang-Muy, of the UNHCR Legal Counselling Project, "According to the 1951 Convention Relating to the Status of Refugees, any individual who has 'voluntarily re-availed himself of the protection of the country of his nationality' ceases to be a refugee." So far, no Nicaraguans with refugee status in the United States have applied to UNHCR for voluntary repatriation.

Nicaraguan Refugees in Central America

Many Nicaraguan refugees in Central America are faced with similar decisions. There are an estimated 26,500 officially registered Nicaraguan refugees in Costa Rica, 23,600 in Honduras, and smaller numbers in Guatemala and El Salvador. Many other Nicaraguans are living in these countries without documentation.

According to UNHCR's representative in Costa Rica, Ana Liria Franch, since the February elections, the rate of requests for voluntary repatriation has more than doubled, from an average of 100 per month before the elections to 200-300 per month since then. Assistance for refugees returning to Nicaragua from Central American countries includes agricultural tools, seeds, and construction material as well as the transportation home and the reinstallation grant.

In Costa Rica, where besides the registered refugee population there are an estimated 80,000-250,000 other, undocumented Nicaraguans, the government has been eager for the Nicaraguans to repatriate. Shortly after the Nicaraguan election, Costa Rican officials announced that the refugee status of Nicaraguans would be revoked, making them deportable. According to UNHCR's Franch, that announcement was "precipitous," and the Costa Rican government now accepts that repatriation will take time. "No one is talking about terminating Nicaraguans' refugee status at this time," Franch told Refugee Reports. "Refugees' identity cards are being renewed as they expire." She added, however, that the issue might be reviewed later in the year, as the situation in Nicaragua becomes clearer.

Recent Developments

HONDURAS: COLOMONCAGUA AND SAN ANTONIO REFUGEE CAMPS CLOSED
El SALVADOR: SIX RETURNEES KILLED

During recent months, an estimated 10,000 Salvadoran refugees who were living in Honduras have voluntarily repatriated to El Salvador. Consequently, according to the UN High Commissioner for Refugees (UNHCR) office in Honduras, Colomoncagua and San Antonio refugee camps, "two camps which have made the headlines of refugee history in Central America during the last decade," were closed on February 27 and March 4, 1990 respectively. Some 2,500 Salvadoran refugees remain at Mesa Grande camp, but, according to UNHCR, they "are not envisaging voluntary return at the present time."

Salvadoran refugees began entering Honduras in 1980. Suspicions that the refugees were supporting Salvadoran guerrilla activities led to the Honduran government sealing the camps and restricting the refugees' movements. Over the years, there have been numerous reports of abuses against the refugees by Honduran military personnel. In 1988, there were two separate incidents in which refugees were killed in or near the camps by Honduran military personnel. Relations between the refugees, the Honduran authorities, UNHCR, and various private relief groups working in the camps were often strained.

Going Home The recent large-scale re-

patriations began in October 1989, when 1,127 refugees from Mesa Grande returned to El Salvador (See Refugee Reports, Vol. X, No. 11). That repatriation--like other repatriations in 1987 and 1988 (See Refugee Reports, Vol. VIII, No. 10, and Vol. IX, No. 9)--was characterized by disagreements between the refugees, the Salvadoran government, and UNHCR, and further official repatriations were temporarily suspended. In November, problems between the various groups had not yet been ironed out, but 1,700 refugees from Colomoncagua camp decided to repatriate without the Salvadoran government's approval or UNHCR assistance. The refugees walked back to El Salvador.

UNHCR-organized repatriations resumed in January and concluded on March 3, 1990. According to UNHCR, the official repatriations were carried out "in conditions of safety and dignity." Once home, however, some returnees have found the conditions far from safe.

According to a report by members of a delegation of the International Council of Voluntary Agencies that visited El Salvador in January, "Salvadoran refugees returning from Honduras were considered by governmental authorities to be FMLN supporters. Local agencies or church organizations seeking to assist the refugees have also been accused of supporting the insurgents.... The mission also heard of attacks by the armed forces against resettlement villages in Chalatenango and Cuzcatlan [provinces], causing the destruction of crops and cattle."

A Scene of Anguish and Confusion On February 11, 5 returnees--including 4 children--were killed and at least 15 others wounded when fighting broke out between government troops and Salvadoran rebels near Corral de Piedra, a village in Chalatenango province that is home to about 500 returned refugees.

According to an American nun who was in the village at the time, "Salvadoran Air Force helicopters and A-37s [Dragonfly jets] strafed and rocketed" the village. "Four families had taken refuge in a tiny brick house when the aerial bombardment began," the nun said. "Everyone in the house when the rockets hit was either killed or wounded." When she arrived at the house, she said it was "a scene of anguish and confusion: friends and family standing, staring, sobbing."

According to the New York Times, "The armed forces denied... that it had attacked the camp, but declined to allow journalists to visit the scene." But the nun, one of several North American sisters who reportedly witnessed the attack, accused the Salvadoran government of "lies, distortions, and misinformation." She said that there had been "almost daily ground fighting and aerial bombardment near one or more of the [returnee] communities." Seven civilians had been wounded in Guarjila, two in Los Ranchos, and four in Las Vueltas prior to this incident, she said.

AFGHANS TO RETURN TO "ZONES OF TRANQUILITY"

April 14 marked the second anniversary of the signing of the Geneva Accords that was to have brought peace to Afghanistan and the return of nearly six million refugees from Pakistan and Iran, the world's largest refugee population.

The situation has changed greatly in the two years since the signing of the Accord, but two major realities are unchanged: peace has not come to Afghanistan and the refugees have not returned.

Given that the prospects for a comprehensive peace are absent in the foreseeable future, but that warfare since the withdrawal of Soviet troops has been more localized, the UN-appointed Coordinator for Afghanistan, Prince Sadruddin Aga Khan, has recently stepped up his call for the return of Afghan refugees to "zones of tranquility" where fighting has died down and access to UN assistance, through the Coordinator's Operation Salam, is possible.

In a recent Yale Law School speech and on the op-ed page of the Washington Post, Prince Sadruddin spelled out his plan. "One of the functions of humanitarian aid and economic reconstruction is to serve as building blocks for peace. Operation Salam's activities should not, therefore, be delayed until there is peace, but rather should precede it."

In a March 27 press conference in Pakistan, Sadruddin was joined by the new UN High Commissioner for Refugees, Thorvald Stoltenberg, and the World Food Program

director, James Ingram, to call for stepped up efforts to repatriate refugees from Pakistan this year.

The group said that fighting has eased in about two-thirds of the country, and that hostilities had ceased in a number of provinces, among them Badakhshan, Badghis, Hazarajat, Herat, Kunar, Logar, and Nimroz.

In his Yale speech, Sadruddin said, "Despite continued fighting in many parts of the country, large areas are now accessible, relatively peaceful, and fully capable of absorbing whatever aid can be provided." He said that this is the easiest it has been in a decade to move freely within Afghanistan, and noted that "some sort of UN assistance has reached every one of Afghanistan's 29 provinces."

The State-run news service of the Afghan regime reported on March 27 that President Najibullah had met with the UN delegation and that he "stressed that the state of the Republic of Afghanistan is ready to prepare all possible facilities in regard to the UN efforts for rendering UN humanitarian aids to the people of Afghanistan both in the areas controlled by the RA state or the regions which are under the opposition's activity."

Kabul radio reported that a memorandum of understanding was signed between the Foreign Ministry and Sadruddin committing the Afghan government to donate to the mine-clearing project.

The reception from the *mujahedin*-led Afghan Interim Government (AIG) Prime Minister Abdul Rad Rasul Sayyaf was not so cordial, according to a report in the Pakistan-based The Muslim. According to that report, the head of the resistance government-in-exile said that refugees from Pakistan would not return until an Islamic government was established in Kabul. The March 28 report of his meeting with Sadruddin said that Sayyaf resented the fact that the UN delegation had held talks with the Pakistani authorities, saying that all issues related to refugees should be raised with the AIG. He said that the UN Coordinator had only discussed with him aid to internally displaced Afghans, and had not discussed repatriation. He further accused Sadruddin of interfering in Afghanistan's internal affairs, according to The Muslim.

Sayyaf reportedly warned that UN distribution centers should not be set up in Afghanistan in areas controlled by the Kabul regime, and demanded that UN relief convoys not travel to cities held by the regime after passing through *mujahedin*-controlled areas.

Zones of Tranquility In order to qualify as a "zone of tranquility" for organized repatriation, Sadruddin said, "an area must have been peaceful for a certain amount of time, and local authorities must have facilitated the establishment of a UN presence."

He told the Yale audience, "It is not a matter of the UN 'creating' zones of tranquility, but rather of noting that they already exist and consolidating them through significant assistance." He said that "such zones should serve as poles of attraction for returning refugees and also as models to be emulated."

Citizens Commission Reports on Afghan Refugees The Citizens Commission on Afghan Refugees, created in 1988 by the International Rescue Committee (IRC), in March sent its third mission to Pakistan to evaluate the prospects for repatriation.

The Commission confirmed that there is little prospect for large-scale return in the immediate future, and said that spontaneous returns have been "limited to specific sectors free from fighting or the threat of massive numbers of land mines." Some 100,000 refugees are reported to have returned spontaneously from Baluchistan Province, considered by most observers to be a less hospitable site for asylum than the Northwest Frontier Province, where most of the refugees are located. The Commission predicts that any eventual settlement "will tend to be diverse in nature, with local and regional interests emerging, in contrast to a highly centralized authority in Kabul."

Given that reality, the Commission essentially endorsed the plan of the UN Coordinator, saying, "recognizing that there are today areas in Afghanistan relatively free of conflict and of deadly land mines, we recommend that the repatriation and reconstruction effort be approached on a sector by sector basis, without waiting for or anticipating the establishment of a dominant central authority in Kabul."

Land Mines Present Formidable Obstacle to Return The Citizen's Commission reserves

Operation Salam demining project, near Keshkhi Refugee Village, NWFP. UNHCR/H.J. Davies

its strongest criticism for inefficiencies and delays in the deactivation of the millions of mines estimated to be in the path of returnees and in the fields they will need to restore in order to become self-sufficient again.

Saying that efforts to date had not met expectations, the Citizens Commission called for "a specific, sector by sector time frame for de-mining." The Commission said, "Refugees will not return to mine infested areas, nor should they."

IRC Executive Director Robert P. DeVecchi told Refugee Reports, "There will be no significant return to zones of tranquility until there is an evident, visible mine-clearing program." He said that mines must actually be cleared, and that the program, thus far, has been largely limited to teaching people to be aware of mines.

Although the mine awareness program has made Afghan refugees more knowledgeable about mines, it has also raised their level of fear, said DeVecchi.

The Citizens Commission warned that the UN Coordinator's plan to return one million refugees in 1990 would be "overly ambitious" given the "objective conditions" that prevail. The Commission urged that mine clearance be stepped up. "Mines are clearly within the Coordinator's operational mandate," said the Commission, "and their elimination is the linchpin in the whole repatriation effort."

The faults in the mine-awareness and mine-clearing parts of the Operation Salam program are symptomatic of problems with the UN operation, which has yet to establish firmly its credibility with the Afghan refugees, according to nongovernmental organization sources in Pakistan. (See Refugee Reports, Vol. IX, No. 3 for other criticisms of the mine awareness program.)

Donor Contributions to UN Effort Lag The UN Coordinator traces the problems with Operation Salam to a lack of funds and the earmarking of funds that have been donated, so that the UN lacks flexibility to respond to a changing situation.

Saying that the funding was "totally inadequate" and that he was "severely constrained" by earmarked donations, Sadruddin announced, "Without the payment of additional or outstanding pledges and greater flexibility in the release of funds, we shall be left with a theoretical blueprint for action which cannot be translated into projects on the ground."

On paper, more than a billion dollars have been pledged to Operation Salam, but nearly $700 million of that was "in kind" contributions, mostly from the Soviet Union, the vast majority of which has not been received. Japan's donation of $90 million is earmarked specifically for repatriation, so remains frozen until the refugees actually begin to move.

U.S. assistance for Afghan refugees has been funneled primarily through bilateral channels. But the U.S. has donated $16.7 million in in-kind food aid through the World Food Program and another $2 million in in-kind contributions for U.S. army involvement in the de-mining program. A cash contribution of $12.5 million was made to the UN Coordinator's Afghanistan Emergency Trust Fund last year, and another $13.5 million has been pledged this year, according to State Department sources.

The Citizens Commission said, "We need to maintain and sustain our present level of humanitarian aid." It added, "We do not believe it could, or should, realistically be increased substantially, given budgetary limitations and demands from other parts of the world--the Horn of Africa, Southern Africa, Southeast Asia, Central America, Eastern Europe, etc."

World Interest in Afghanistan Seems to Ebb The Citizens Commission uses the term "Donor Fatigue" to indicate the diminished interest in Afghan refugees. A variety of reasons are suggested for this, but one stands out: the conflict is seen less as a security and ideological threat posed by the Soviet Union and increasingly one of rival factions of little specific interest to those outside of Afghanistan itself. The Citizens Commission points out, "While the humanitarian needs of the refugees, and of Afghanistan itself, remain both urgent and compelling, the geopolitical aspects of the equation have decreased."

The Commission warns, "The stakes, however, are too high and the commitment too long and enduring to give in to 'donor fatigue,' or to walk away from the Afghan cause at this juncture."

CONGRESS VOTES FOR ADDITIONAL REFUGEE FUNDING THIS YEAR

Tucked into a bill to appropriate more than $2.4 billion for the remainder of this fiscal year is $100 million for refugee admissions and assistance.

The FY 90 supplemental appropriation passed the House by a 365-59 vote on April 4, and was expected to pass the Senate on April 25. The bills will have to be reconciled in conference, but both House and Senate versions already agree on those portions relating to refugees.

Soviet Jews Are Major Beneficiaries of New Refugee Funds The supplemental includes $75 million for the State Department's Migration and Refugee Assistance account. That includes $70 million requested by President Bush for refugees to be resettled in the United States.

The $70 million will be devoted to processing and care and maintenance of refugees in Europe ($38 million), transportation to the United States ($14 million), and initial resettlement costs ($18 million) for an increase in 27,000 refugee admissions over the 110,000 funded places previously authorized for admission to the United States. This represents the admission of 24,000 additional Soviets, 2,000 Amerasians, and 1,000 Africans.

The overall ceiling for Soviet refugee admissions now stands at 50,000, of which 10,000 are to be privately funded. As of now, Jewish voluntary agencies have been able to raise enough to fund 8,000 admissions. Ambassador Princeton Lyman, the director of the State Department's Bureau for Refugee Programs, testified before the Foreign Operations subcommittee on March 19 that much of the supplemental would be directed toward clearing the 40,000 Soviets in the Rome/Vienna pipeline. He estimated that the last Soviet emigres would be cleared out of Rome and Vienna and admitted to the United States by the end of May.

The supplemental appropriation included another $5 million for resettlement of

Soviet, East European, and other refugees in Israel. This is in addition to the $25 million already in the FY 90 budget for refugee resettlement in Israel.

The supplemental also includes $25 million to replenish the Emergency Refugee and Migration Assistance Fund (ERMA). President Bush had requested no additional money for overseas refugee assistance this year. As a result of a concerted advocacy effort by private groups, as well as the House Hunger Committee, Congress saw the need to appropriate money for overseas refugee emergencies without an Administration request (see Refugee Reports, Vol. XI, No. 2).

The $25 million replenishes a nearly equal amount from the ERMA account that was released on March 14, and announced in the April 16 Federal Register. UNHCR, whose capacity to assist refugees has been critically hampered by budget shortfalls, will receive $12.45 million for programs in Africa ($5.25 million for UNHCR programs in the Horn of Africa; $5 million for programs in Malawi; $1.2 million on behalf of Liberian refugees--the United States will contribute another $200,000 to the League of Red Cross and Red Crescent Societies for Liberian refugees; and $1 million for programs in Angola and Zaire). Another $2 million will be donated toward refugees in the Horn of Africa through the International Committee of the Red Cross (ICRC). The ICRC is also slated to receive $300,000 for programs in El Salvador and Panama. In support of the Comprehensive Plan of Action, $10 million from the ERMA fund will be spent on behalf of refugees in Southeast Asia.

The supplemental appropriation for ERMA would bring the balance of that account back up to almost $50 million.

DADE COUNTY CALLS FOR FEDERAL INVESTIGATION OF ALLEGED ABUSES AT INS KROME FACILITY

On March 9, Dade County (Florida) Commissioner Barbara M. Carey wrote to Attorney General Richard Thornburgh requesting "that a Federal Grand Jury inquiry be conducted of the overall treatment and the process itself of the [Immigration and Naturalization Service (INS)] Krome Detention Center." Dade county includes the Miami metropolitan area.

The request for an investigation arose after a March 1 meeting of the County Commission's Immigration Advisory Committee at which commissioners were presented more than 70 affidavits from Krome detainees, former detainees, and by lawyers and other aid workers who regularly visit Krome. The April 11 Miami Herald said the affidavits "paint a chilling picture of the INS camp as a Gulag for refugees.... They tell stories of physical and sexual abuse; stories of humiliation and harassment."

Rep. Dante Fascell (D-Fla.) also wrote to Thornburgh supporting the call for a federal investigation of Krome. Fascell told Thornburgh, "While I strongly support the enforcement of our immigration laws, the documentation is most disturbing and would indicate that long-standing abuses at the center remain uncorrected." Fascell added, "With charges this serious, there is no choice but to investigate."

What the Detainees Say Among the abuses described by detainees and former detainees in the affidavits:

° Male detainee: "One time he [a guard] manhandled a man on the way to the clinic, knocked him down and hurt his arm so that he bled a lot."

° Male detainee: "Suddenly the guards dragged the men out of the room and took one of them and banged his head against the metal barrister."

° Female detainee: "The worst searches are after visits.... Some of them [guards] just pat you down, and some make you take off your outer clothes. But there are others who like to make you take everything off, and some that are even worse.... They treat us like animals. Not all of them, all the time, but the ones who don't can't stop the ones who do."

° Male detainee: "He is always telling us we are dogs and pigs and saying there is no food in Haiti and that is why we left."

° 15-year-old detainee minor: "At one point, when a delegation from outside came to visit Krome, they had the minors put on civilian clothes.... Some of the minors in Krome said they wanted to kill themselves.... I felt I was going crazy sometimes. People on the outside don't realize what's going on in Krome. Since no one knows, the immigration officers do whatever they want."

° Male detainee: "Maybe they will kill me in Haiti.... But this is worse. This is no

country for black people."

According to the Herald, INS District Director Richard Smith called the charges "serious and not dismissable" and forwarded the affidavits to the INS central office in Washington, D.C., requesting an investigation. Smith reportedly fired one guard who had been repeatedly mentioned in the affidavits as being particularly abusive, and moved other guards to the Miami airport or to positions in Krome with no direct contact with detainees.

"Haitians Seem to Be Treated Worse Than Any Other Group" The affidavits were compiled by attorneys at Miami's Haitian Refugee Center (HRC) and other immigration attorneys in Miami. Cheryl Little, staff attorney at the HRC, presented the affidavits to the county commissioners. Little told Refugee Reports, "HRC began collecting these affidavits in January, 1989...in an effort to detail the abuses alleged to have taken place and also out of concern that detainees...might be transferred or deported without having the opportunity to speak out."

Detainees of different nationalities have complained about abuses. According to the Herald, a Fort Lauderdale attorney who is president of the South Florida chapter of the American Immigration Lawyers Association said, "The guards poured buckets of ice water over my client, a Brazilian, when he was in the isolation room." The paper also cited the example of Jose Herrera, a Salvadoran former detainee who said he watched a Krome guard beat an Ecuadorian detainee until two ribs were broken "because the guy didn't sit right with him."

Most of the affidavits, however, are from Haitians. Krome, a facility for non-criminal aliens only, has a predominantly Haitian population. In February, 320 of the 477 detainees at Krome were Haitian. According to Little, "The Haitians seem to be treated worse than any other group, I think primarily because they are black." In December, Refugee Reports interviewed several Haitian detainees at Krome, as well as two former detainees now living in Miami (See Refugee Reports, Vol. XI, No.2). One of them said, "Not only Haitians are treated very badly. But the Haitians are treated more badly."

Krome Employee Backs Up Detainees' Charges

In an interview with the Herald, a Dade County teacher who has worked at Krome since 1983 said, "What goes on at Krome is more horrible than anyone can imagine. But not much gets out because people don't put much stock in what the families of detainees say. And the employees there are scared to lose their job." She described seeing a guard beat a detainee severely, breaking his arms and legs. But, she added, the INS officially called it an accident.

"Not all the guards at Krome are abusive," Little points out, "and certain of them seem to be good people who care about the detainees." "But," she added, "all it takes is a handful of corrupt employees."

Update

° Malaysia has pushed back boats carrying some 5,660 Vietnamese asylum seekers during the past eleven months, according to Refugee Reports staff writer Court Robinson, who is currently in Malaysia.

Robinson said that the proportion of boats turned away is approaching 90 percent. "Arrivals have become the exception rather than the rule," he said.

U.S. State Department spokeswoman Margaret Tutwiler said on April 17 that the United States had "vigorously protested the denial of first-asylum to Vietnamese."

Robinson will be reporting on the situation in Malaysia and Thailand in next month's Refugee Reports.

° More than 800 Ethiopian Jews were reportedly forcibly returned to Ethiopia in January by Sudanese authorities. The refugees were forced across the border at gunpoint, according to the former administrator of Safawa refugee camp in Sudan, Rev. Michael Evans, S.J., who had interviewed a number of the refugees when they first entered Sudan in June 1989.

Evans worked with the American Refugee Committee in eastern Sudan until he was expelled from the region in July 1989. In a letter to UN High Commissioner for Refugees Theovald Stoltenberg, Evans said that from the time the refugees arrived in Sudan, their treatment was "considerably different at the hands of COR and local Sudanese officials" than that of other refugees. "It is

reasonable and credible to believe that they experienced the holdup in registration, lack of food and shelter, and strong security precautions because they were Falasha [as Ethiopian Jews are sometimes known]--and that they were refouled for the same reason," Evans said.

° On March 22, the directors of the National Association of Evangelicals and World Relief wrote a letter to President Bush apprising him of the existence of some 900 evangelical Protestant families in the Soviet Union who had applied for Soviet exit visas to Israel prior to the change in U.S. processing of Soviet refugees that went into effect on October 1, 1989.

The October 1 policy change blocked exit to Vienna, and was intended to allow Soviets to apply for U.S. processing in Moscow without first surrendering their identification papers and jobs. However, these 6,000 people had already renounced their citizenship, surrendered their domestic passports, given up their homes, and terminated their jobs, according to World Relief. "Their lives are clearly at risk," said the letter.

° President Bush issued an executive order on April 11 barring deportation of all Chinese nationals from the United States until January 1, 1994, provided that they were in this country between the time of the Tiananmen Square Massacre, June 5, 1989, and the signing of the order on April 11, 1990.

The order further waives the two-year home country residence requirement for PRC exchange students until 1994. The order waives the requirement of a valid passport for the same time period and directs U.S. officials to facilitate travel and reentry of PRC nationals. It also allows those PRC nationals who were in lawful nonimmigrant status before June 5, 1989 to maintain their lawful status, and authorizes employment for PRC nationals during the period of protected status.

° The electrified fence that South Africa has constructed along its border with Mozambique was described as "diabolical and inhuman" by U.S. Coordinator for Refugee Affairs Ambassador Jewel S. Lafontant at a press conference in Maputo, Mozambique on March 30.

Lafontant said that South Africa had set up the electrified fence deliberately "to kill human beings" in order to keep out Mozambican refugees. "South Africa should turn the power off," she declared.

Lafontant's press conference capped her tour of refugees in southern Africa. She said that she delivered a letter to President Banda of Malawi from President Bush pledging $5 million for refugee camps in Malawi, according to the April 1 Sunday Mail.

° Angolan refugees who recently repatriated to Angola from Zaire are facing critical food shortages. Beginning late 1989, more than 6,500 Angolan refugees voluntarily repatriated under a UNHCR-sponsored program.

The former refugees were flown from Zaire to their home areas in a remote border region of Angola. But due to the civil war in Angola, those areas are only accessible by air. UNHCR, because of its funding crisis, cannot afford to charter airplanes to fly food into the area on a regular basis. The agency has borrowed grain available locally from government and other sources, but not enough to meet all of the returnees' needs.

° Immigration and Naturalization Service (INS) Commissioner Gene McNary informed a House appropriations subcommittee on March 21 that the INS is requesting $884.3 million for FY 91, a $42 million increase over the current year. Since INS generates income through various fees for immigration-related services, McNary said that the total resources available to the agency in FY 91 would be in excess of $1.1 billion.

The House Judiciary Committee is currently considering a FY 91 authorization bill for the Justice Department (H.R. 4315) that would include the full amount requested by the INS.

The INS would use most of the increase to boost its enforcement capacity by, among other things, adding 200 Border Patrol agents. McNary said, "The funding will support increases in the number of drug-tracking canine teams, sensors, helicopters, and passive physical devices to prevent alien and drug smugglers from driving across the border and bypassing established ports-of-entry."

The INS is requesting $4.5 million to

build a 300-bed lockdown facility in the Krome Service Processing Center in Florida to accommodate criminal aliens. Congress has prohibited the INS from detaining criminal aliens in Krome until a secure-lockdown dormitory is constructed meeting standards set by Congress (see Recent Developments).

Generally, though, the budget requested by the INS would drop by $4 million the amount spent last year for detention and deportation.

The INS also requested nearly $1 million to enhance public awareness of the anti-discrimination provisions of the 1986 Immigration Reform and Control Act.

° The U.S. General Accounting Office (GAO) determined that the employer sanctions and verification provisions of the Immigration Reform and Control Act of 1986 (IRCA) have resulted in "widespread discrimination." An estimated 461,000 employers, or 10 percent of all those surveyed, reported national origin discrimination because of the law.

The GAO report said that it was "likely that the widespread pattern of discrimination...could be reduced if employers were provided with more education on the law's requirements and a simpler and more reliable verification system."

° On March 20, Canadian Minister of Employment and Immigration Barbara McDougall announced new guidelines for immigration officers to use co consider humanitarian and compassionate grounds for reviewing asylum claims.

The regulations resulted from a March 8 decision of the Federal Court of Canada, holding that the government's approach to asylum applicants in its backlog of more than 100,000 is overly restrictive and limits immigration officers' discretion.

The Canadian law provides for humanitarian and compassionate review of asylum seekers both before a determination of refugee status is made and prior to removal of those deemed not to have a credible basis for their refugee claims. As of March 9, 1,287 cases had been accepted on humanitarian grounds. In announcing the new guidelines, MacDougall said that Canada would not declare an amnesty for the refugee claimants in the backlog.

Feature

ASYLUM DECISIONS "POLITICAL", COURTS RULE

Several federal courts have recently ruled that asylum decisions are inherently political, and have deferred to the political judgments of the Board of Immigration Appeals (BIA), the highest administrative body within the Justice Department for appeal of asylum claims.

All of the recent cases discussed in this article, in which federal appeals courts have allowed the political judgments of the BIA to stand, involve denying the asylum claims of Salvadorans.

The first case, M.A. v. INS, involves the denial of asylum to a Salvadoran who fled his country in 1982 to evade conscription in the Salvadoran military (see Refugee Reports, Vol. IX, No. 11).

By a 6-5 vote, the full U.S. Court of Appeals for the Fourth Circuit on March 27 reversed an earlier Fourth Circuit panel decision and upheld the BIA's denial of a motion to reopen a deportation proceeding to consider an asylum claim of the Salvadoran, known as M.A.

M.A. (initials are used, at his lawyer's request, to preserve his anonymity) had requested a reopening of his deportation proceeding on the grounds that he had had ineffective counsel, because, among other things, his original lawyer had made no effort to explore or raise an asylum claim at his deportation hearing.

M.A. claimed that, if returned to El Salvador, he would be forced to associate with a military that commits internationally condemned acts, and cited atrocities committed by the Salvadoran army to support his position.

The BIA had rejected his motion to reopen his hearing in order to present his asylum claim for the first time, saying he had not shown that he would personally be required to commit acts of inhuman conduct in his military service. The Board also noted that there had been no official international condemnation of the Salvadoran military or government, a requirement it said was imposed by the UN Handbook on Procedures and Criteria for Determining Refugee

Status in the case of asylum claims by conscientious objectors.

The earlier panel of the Fourth Circuit had said that M.A. had presented sufficient evidence of Salvadoran military atrocities to show that it does, in fact, violate the Geneva Conventions. The panel had said that the BIA was wrong to wait for international bodies, such as the UN, to officially condemn El Salvador.

The panel had concluded that M.A. had "presented evidence from a wide variety of sources to show that the atrocities committed against the civilian population by the military are frequent and widespread."

That panel also held that the BIA was too harsh in requiring M.A. to prove that he would be compelled to commit atrocities, saying, "It is unlikely that such a standard could ever be met."

Federal Court Defers to "Political... Decision" of BIA However, this decision was reversed by the full Fourth Circuit on March 27. The crux of the court's action rested on deferring to the political nature of the BIA's decision-making on asylum matters. "In reviewing the Board's denial of a motion to reopen deportation proceedings," said the majority, "we must be sensitive to the inherently political nature of the decision whether or not to deport."

The dissenting opinion attacked the majority on precisely this point. Writing for the five dissenters, Senior Circuit Judge Harrison L. Winter wrote, "It is precisely the politicization of the asylum process that troubles me, and suggests that heightened deference to the Board is unwarranted." The dissenting opinion cited ideological and geographical biases in BIA decisions, and said that such decisions called for greater, not less, judicial scrutiny.

The majority had said that the BIA had not abused its discretion in denying the motion to reopen. It said it could only reverse the BIA's denial if it was irrational, inexplicably departed from established policies, or represented invidious discrimination. Citing a 1986 Seventh Circuit precedent, the majority said, "The [BIA's] decision need only be reasoned, not convincing."

The dissenting opinion said that since the BIA was interpreting the statute--whether M.A. had made a prima facie case of a well-founded fear of persecution--it need not be accorded the deference an administrative agency should be given in its exercise of discretion.

Beyond that, Judge Winter said deference should not be accorded when agency interpretations are inconsistent. The dissent pointed out that the BIA "interprets the well-founded fear standard inconsistently, and in violation of the mandate of the Refugee Act of 1980." Judge Winter cited both case and statistical discrepancies to buttress his finding of "an impermissible infusion of ideology into the asylum process."

Court Rejects Human Rights Reporting of Private Organizations in Asylum Context Among the evidence M.A. had presented in support of his motion to reopen were reports on Salvadoran human rights by Amnesty International and Americas Watch. The majority called the use of these reports "problematic almost to the point of being non-justiciable." The courts said, "Although we do not wish to disparage the work of private investigative bodies in exposing inhumane practices, these organizations have their own agendas and concerns, and their condemnations are virtually omnipresent."

Judge Winter took exception to this point as well, saying, "Since the founding of the United Nations, nongovernmental organizations such as Amnesty International and Americas Watch have been full and active participants in the development of human rights law, and their writings have long been considered a valid source of international law." He said that by indicating private agency reports are "biased, standardless, and have little probative value," the majority had sent a "loud and clear" message to the BIA "that these reports are irrelevant."

The majority had said that the use of private human rights reports would require the courts "to make immigration decisions based on our own implicit approval or disapproval of U.S. foreign policy and the acts of other nations." It rejected such a role for itself, citing a law review article to the effect that "to accept the claim of someone to qualify for refugee status is publicly to accuse some other state of engaging in persecution." The majority said that federal courts lack the expertise and

the constitutional authority to assume that role. "Such a role for the courts would transform the political asylum process from a method of individual sanctuary left largely to the political branches [of government] into a vehicle for foreign policy debates in the courts."

Winter countered with the argument that "by allowing an asylum applicant to submit evidence of condemnation from private international orgnizations, a court does not indicate its approval of such opinions, but merely recognizes that a 'reasonable person' could fear persecution if the published reports were true." He went on to say, "Indeed, even a finding that the alien has a well-founded fear suggests only that one individual fears persecution, and not that the government in question is an international outlaw."

Back to Basics Despite the heated and lengthy (29 pages for the majority; 28 for the dissent) decision, neither side examined whether M.A. had ineffective counsel or not, the basis for his claim to consider his asylum request in deportation proceedings (although the earlier Fourth circuit panel decision had concluded that M.A. had been deprived of his right to apply for asylum because of ineffective counsel).

The editors of the immigration law weekly Interpreter Releases wrote, "The most distressing aspect of this decision is the way the underlying injustice--M.A.'s deprivation of the right to a hearing on his asylum claim because of ineffective assistance of counsel--is obscured by doctrinal and political currents. Doctrinal currents force the parties and judges into baffling angels-dancing-on-pins analyses of the standard of review. Political currents generate an overheated, incoherent treatment of topics better left for a decision on the merits. The fact remains: through no fault of his own, M.A. has never had an asylum hearing."

Other Federal Courts Say Interpretation of "Political Opinion" is "Political Question" for BIA to Decide Two other federal courts of appeal--the First and the Eleventh--also recently deferred to the political judgment of the BIA to interpret the meaning of "political opinion" in the asylum statute phrase of a "well-founded fear of persecution on account of...political opinion." The three cases also involved Salvadorans.

In Perlera-Escobar v. Executive Office of Immigration Review, the Eleventh Circuit said that what constitutes a political opinion for purposes of asylum is "a political question which the courts are not especially qualified to decide." Therefore, the court deferred to the BIA's judgment that "harm and threats that may incidentally result from behavior meant to achieve a political objective, be it the overthrow of the existing government or, alternatively, the defense of the government against armed insurrection, is not persecution on account of political opinion."

The starting point for the BIA's determination of whether a government's punishment of its opponents is persecution rests on the BIA's view of the legitimacy of the government. And, said the Eleventh Circuit, "The BIA found nothing in the record to indicate that the government of El Salvador is anything other than a duly established government. As such it has the internationally recognized right to defend itself against attack and rebellion.... The government will not harm [Escobar] because of political opinion, but rather because he is or was an opponent of the government."

This trend has continued in two similar cases arising in the First Circuit, Umanzor-Alvarado v. INS and Novoa-Umania v. INS, in which that court also recently sided with the BIA in denying asylum to other Salvadoran asylum seekers who claimed a fear of persecution based on political neutrality in the conflict in El Salvador.

BIA Grants Asylum to Afghan, Citing "Existing Political Situation" Coincidentally, a recently published decision by the Board of Immigration Appeals underscores the political character of its decision-making in a grant of asylum, resting in large part on the BIA's political evaluation about the legitimacy of the government of Afghanistan. In this case, Matter of Izatula, the BIA said that the Afghan government has no legitimate authority to impose any punishments.

The Board overturned an immigration judge's denial of asylum to Izatulah, who had claimed a well-founded fear of persecution based on his refusal to join the military and because he had supplied clothes,

groceries, and other items to the *mujahedin* guerrillas from his store.

Looking at "the existing political situation in Afghanistan," the BIA concluded that it is "different from countries where citizens have an opportunity to seek change in the political structure of the government via peaceful processes."

The Board concluded, "Therefore, because we find that the applicant has established that he is at risk of being punished for his political activities in Afghanistan, and because there is no basis in the record to conclude that any punishment imposed by the Afghan Government would be a legitimate exercise of sovereign authority, we conclude the applicant has established a well-founded fear of persecution in Afghanistan."

Board member Fred Vacca, who concurred with the majority that Izatullah had a well-founded fear of persecution, nevertheless dissented from the way the majority arrived at that decision. He said, "The majority wades in dangerous waters when it presumes to make judgments as to the legitimacy of sovereign nations by scrutinizing their political systems."

He said that focusing on the political system of a country "in order to determine whether it engages in prosecution or persecution is erroneous and serves no useful purpose."

Vacca said, "To hold that some governments may create laws affecting crimes, adjudicate criminal cases, and impose punishments upon offending citizens and other governments may not depending on the nature of their political systems is patently absurd."

As a Refugee Reports subscriber, you should by now have received your copy of the World Refugee Survey--1989 in Review. If not, please contact us so that we can get it to you right away.

This color poster based on the Survey cover is also available for $5.00 (including postage and handling.) Two or more are $3.00 each. Please send check or money order to:

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We do not have the moral right to underestimate refugee pain.

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Photo: Burmese students cross the Moei River into Thailand. Since Burmese army offensives in late 1988, more than 40,000 Burmese refugees are in Thailand, where aid and asylum are limited. Photo Credit: Reuters

PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE FY 1990

STATE	FY 1990 PROPOSED ALLOCATION	STATE	FY 1990 PROPOSED ALLOCATION
California	$10,982,566	Missouri	$ 51,830
Colorado	162,860	New Jersey	263,703
Florida	16,957,632[a]	New York	952,259
Hawaii	165,523	Oregon	406,819
Illinois	624,541	Pennsylvania	355,516
Kansas	133,363	Rhode Island	188,009
Louisiana	80,398	Texas	297,040
Maryland	130,176	Utah	111,082
Massachusetts	648,987	Virginia	288,825
Minnesota	711,506	Washington	734,165
		TOTAL	$34,246,800

[a]The allocation for Florida includes $14,000,000 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools.

* Source: Office of Refugee Resettlement. For a complete text of the proposed rule regarding targeted assistance grants, see the Federal Register, Vol. 55, No. 72, April 13, 1990, pp. 13973-79.

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